

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1410 of 1992

with

SPECIAL CRIMINAL APPLICATION No 1411 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos.1 to 5 - No.

HARSHADRAI SHYOAMRAI MEHTA

Versus

VIMLABEN HARSHADRAI S MEHTA

Appearance:

1. Special Criminal Application No. 1410 of 1992
MR PK JANI for Petitioner
MR HM PARIKH for Respondent No. 1
MR.ST.MEHTA,ADDL.PUBLIC PROSECUTOR for Respondent No. 2
2. Special Criminal ApplicationNo 1411 of 1992
MR PK JANI for Petitioner
MR HM PARIKH for Respondent No. 1
MR.ST MEHTA,ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/02/97

ORAL JUDGEMENT

Both these petitions are preferred by the husband who has been ordered to pay an enhanced amount of maintenance to his estranged wife, the respondent No.1 and whose application for cancellation of order of maintenance has been rejected. The facts leading to the present case are as under:

The petitioner and the respondent No.1 were married sometime in the year 1954 and stayed together till 1967. The respondent No.1 thereafter filed criminal miscellaneous application No.13/67 before the learned Judicial Magistrate, First Class, Vijapur for maintenance under section 488 of the Code of Criminal Procedure, 1898. Said claim for maintenance was compromised and in view of the compromise arrived at by the petitioner and the respondent No.1 the learned Judicial Magistrate on 19-2-69 ordered the petitioner to pay a monthly maintenance of Rs.81/- to the respondent No.1. It was further directed that the petitioner may pay a lump sum amount of Rs.7500/- within six months of the date of the order and in the event he pays such lump sum amount, respondent No.1 would not be entitled to monthly maintenance of Rs.81/-. The petitioner, however, did not pay lump sum amount of Rs.7500/- to the respondent No.1 within six months as directed by the court or at any time thereafter. He, however, continued to pay maintenance of Rs.81/- to the respondent No.1.

The respondent No.1 on 6th July, 1989, preferred Criminal Misc.Application No.137/89 under section 127 of the Code of Criminal Procedure before the learned Judicial Magistrate, First Class, Vijapur. She claimed that since the earlier order of maintenance the financial condition of the petitioner had improved considerably and in view of the rise in the cost of living, she was unable to maintain herself. She, therefore, claimed enhancement of maintenance awarded to her and demanded monthly maintenance of Rs.500/-. The petitioner preferred Cri.Misc.Application No.210/89 on 3rd October, 1989 before the learned Judicial Magistrate, First Class, Mehsana, and claimed that he was old and ailing and the respondent No.1 had inherited a large piece of land from her parents and she was earning more than a Lakh of Rupees from the said agricultural land as well as from the cattle maintained by her. He, therefore, claimed that the order of maintenance passed in favour of respondent No.1 be cancelled. The learned Judicial Magistrate, First Class, Vijapur, who tried both the

applications under his judgments and orders dated 12th November, 1991, rejected the application no.210/89 preferred by the petitioner. However, he allowed the application No. 137/89 preferred by the respondent No.1 and enhanced the amount of monthly maintenance payable to her to Rs.400/-.

Feeling aggrieved, the petitioner preferred Criminal Revision Applications No.207 of 1991 and 208 of 1991 before the learned Additional Sessions Judge, Mehsana. Both the said revision applications were rejected by the learned Additional Sessions Judge under his judgments and orders dated 30th June, 1992. Feeling aggrieved, the petitioner has preferred these petitions.

Petitioner failed to establish that he was old and ailing and that his income had reduced. He also failed to establish that the respondent No.1 was earning Rs.1,50,000/- as claimed by him. It is, however, found that the respondent No.1 did inherit the agricultural lands from her parents and she was earning around Rs.4,000/- to Rs.5,000/- by way of agricultural income. Considering the rise in the cost of living, the courts below held that the aforesaid amount was not sufficient for maintenance of the respondent No.1 and considering the petitioner's income she has been awarded monthly maintenance of Rs.400/-. Learned Advocate Mr.Jani appearing for the petitioner has contended that the petitioner and the respondent No.1 had settled the matter of maintenance amongst themselves as far back as in the year 1969 and the said settlement being final, the respondent No.1 could not have any right to enhancement of maintenance under section 127 of the Code. Be it noted that though the issue was settled between the parties amongst themselves, learned Judicial Magistrate, First Class had issued directions to pay maintenance in terms of the said compromise. Thus, the right to maintenance accrued to the respondent No.1 on account of the order made by the learned Magistrate and not on account of the settlement entered into by and between the petitioner and the respondent No.1. Section 127 of the Criminal Procedure Code empowers the Magistrate, inter alia, on proof of change in the circumstances of any person receiving monthly allowance or ordered to pay monthly allowance, to make such alterations in the allowance as he thinks fit.

In the present case also the petitioner has been ordered to pay monthly allowance (under section 488 of the Code of Criminal Procedure, 1898) and the respondent No.1 was receiving monthly allowance under orders of the

learned Judicial Magistrate, First Class made on 19-2-69 and, therefore, on proof of change in the circumstances of either of the two, the learned Magistrate was empowered to make such alterations in the allowance as he thought fit. Thus, in my view, the learned Magistrate by altering the amount of maintenance payable to respondent No.1 has acted within his jurisdiction.

In view of the findings recorded by both the courts below, it cannot be said that the petitioner's condition is so deteriorated that he is unable to pay maintenance to his estranged wife. On the other hand, the respondent No.1 has been able to establish that the petitioner's monthly income was not less than Rs.5,000/and that she was unable to maintain herself from the amount of maintenance paid to her and the agricultural income earned by her. In view of the above finding, the enhanced amount of monthly maintenance awarded to the respondent No.1 cannot be said to be disproportionately high. In the circumstances, neither of the orders of the learned Magistrate confirmed by the learned Additional Sessions Judge requires to be interfered with.

Both the petitions are, therefore, dismissed. Rule is discharged. The interim order made on Spl.Cri.Application No.1411/92 is vacated. The petitioner is directed to pay the amount of arrears of maintenance to the respondent No.1 within a period of four months from today. Respondent No.1 shall be at liberty to withdraw the amount of cost deposited in this court.
